

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Lewis I. and Sylka Lisook, et al

90-01192

Name of Respondent(s)

Allan J. Feldman,  
Barbara J. Feldman, and  
Total Services, Inc.

MAR 22 1991

ARBITRATION-CHICAGO

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 26, 1990, Claimants Lewis I. Lisook and Sylvia Lisook individually and on behalf of the Lisook Family Intervivos Trust, L&B Company, Arizona Medical Laboratories Money Purchase Plan alleged claims against Respondents Alan and Barbara Feldman ("the Feldmans") and Total Services, Inc. ("Total Services") under the Arizona Securities Act, the Arizona Racketeering Act, Arizona common law principles of negligence, common law fraud and breach of fiduciary duty and the NASD Rules of Fair Practice. The Lisooks alleged that Feldman made misrepresentations to them to induce them to purchase various limited partnerships including, but not limited to, the following:

1. He misrepresented his financial expertise;
2. He misrepresented that he was recommending suitable investments for the Claimants;
3. He misrepresented the liquidity of the limited partnerships;
4. He misrepresented that the value of the Lisook's investments would double in five (5) years;
5. He misrepresented that the investments would be extremely profitable;
6. He failed to disclose risks of placing approximately 60% of the Lisooks' investment portfolio in illiquid real estate limited partnerships; and

7. He failed to disclose that these products were being sold to generate commissions for Feldman rather than provide the best investments for the Lisooks.

In an answer filed with the NASD on or about June 5, 1990, the Feldman's and Total Service specifically denied all allegations of the claim and asserted certain affirmative defenses including, but not limited to, laches, estoppel, assumption of risk, the investments were the type of recommendations that would have been made by a reasonably prudent financial planner at the same time under similar circumstances and that the claims were time barred by applicable statutes of limitation.

#### RELIEF REQUESTED

Claimants requested mandatory treble damages of \$1,159,185 under the Arizona Rico Statute plus interest of 10%. In the alternative, the Lisooks requested damages of at least \$386,395.00 plus interest at the highest legal rate, costs of the arbitration, reasonable attorney's fees, punitive damages of \$1,000,000 and such other relief as the panel deems just and equitable. The Feldman's and Total Services requested dismissal of the claims, an award of their costs and attorney's fees and any other ruling the panel deems just and proper.

#### PROCEDURAL MATTERS

The panel considered the motion for an award dismissing all claims filed on behalf of the Respondents on February 9, 1990 and having taken the motion under advisement hereby denies that motion.

#### AWARD

On January 28 & 29, 1991 and February 8 and 9, 1991 in Scottsdale, Arizona during a hearing lasting eight (8) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed on April 23, 1990 by Claimants Lewis I. and Sylka Lisook, individually and on behalf of the Lisook Family Intervivos Trust, Arizona Medical Laboratories Company Money Purchase Plan and L & B Company, on July 11, 1990 by Barbara Feldman, President on behalf of Respondent Total Services, Inc. and on July 11, 1990 by Respondents Allen and Barbara Feldman, individually.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

After considering the pleadings, the testimony, the evidence presented at the hearing and the trial briefs submitted by the parties, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Total Services and the Feldmans are jointly and severally liable for and shall pay to the Lisooks individually and in their representative capacity on behalf of the companies and the trust, inclusive of interest, the sum of Three Hundred Fifty Four Thousand Dollars and No Cents (\$354,000);

2. Simple interest at the rate of is 10% is assessed on the above stated sum from and inclusive of the date this award is served on the parties;

3. In consideration for the payment of the \$354,000 plus the interest awarded to the Lisooks, they shall tender to Feldman and Total Services the following investments:

1. PLM
2. Wespac Investors Trust III
3. Damson 83-84 Energy Limited Partnership
4. August Propertites Fund III (1st investment)
5. Morgan Energy Partners
6. Phoenix Leasing Income Fund VII
7. Centennial Development Fund V
8. Sierra Capital Reality Trust IV
9. August Properties fund III, (2nd investment)

4. The claim for punitive damages is specifically denied and dismissed in its entirety;

5. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter;

6. The panel hereby rules that it had jurisdiction to hear the claim sounding under the Arizona Rico Statute but rules that this claim is specifically denied and dismissed on its merits. Accordingly, no treble damages are awarded; and

7. Pursuant to Section 43(c) of the Code of Arbitration Procedure the National Association of Securities Dealers, Inc. shall refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. The NASD retains the \$250.00 non-refundable filing fee deposited by the Claimants and the sum of \$8,000 is assessed jointly and severally against the Feldmans and Total Services as forum fees.

Panel Members Concurring

Dated: Feb. 27, 1991

Casceil M. Aronson  
Casceil Aronson  
Presiding Chair

Dated: \_\_\_\_\_

Peter Kerwick

Date: \_\_\_\_\_

George Hartz  
Industry Arbitrator

Date Served: \_\_\_\_\_

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Panel Members Concurring

Dated: \_\_\_\_\_

\_\_\_\_\_  
Casceil Aronson  
Presiding Chair

Dated: 3/15/91

  
Peter Kerwick

Date: \_\_\_\_\_

\_\_\_\_\_  
George Hartz  
Industry Arbitrator

Date Served: \_\_\_\_\_

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Panel Members Concurring

Dated: \_\_\_\_\_

\_\_\_\_\_  
Casceil Aronson  
Presiding Chair

Dated: \_\_\_\_\_

\_\_\_\_\_  
Peter Kerwick

Date: Feb. 16, 1991

George E. Hartz  
George Hartz  
Industry Arbitrator

Date Served: \_\_\_\_\_